

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

EIS, INC.,

Plaintiff,

v.

INTIHEALTH GER GMBH,  
WOW TECH USA, LTD., WOW TECH  
CANADA, LTD. and NOVOLUTO GMBH,

Defendants.

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Civil Action No.: 19-cv-1227-GBW

Demand For Jury Trial

NOVOLUTO GMBH,

Counterclaimant,

v.

EIS, INC., EIS GMBH,  
TRIPLE A IMPORT GMBH,  
and TRIPLE A MARKETING GMBH,

Counterclaim Defendants.

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**DEFENDANT/COUNTERCLAIMANT NOVOLUTO GMBH’S  
MOTION TO STRIKE PLAINTIFF AND COUNTERCLAIM-DEFENDANTS’  
ELECTION OF PRIOR-ART-BASED INVALIDITY ARGUMENTS  
PURSUANT TO IPR ESTOPPEL, 35 U.S.C. § 315(e)(2)**

Pursuant to the IPR estoppel provision of the America Invents Act, 35 U.S.C. § 315(e)(2), and Paragraph 4 of the Scheduling Order (D.I. 288), Defendant and Counterclaimant Novoluto GmbH (“Novoluto”) moves to strike Plaintiff EIS, Inc.’s and Counterclaim-Defendants EIS GmbH, Triple A Import GmbH, and Triple A Marketing GmbH’s (collectively, “EIS”) January 23, 2023 Election of Prior-Art-Based Invalidity Arguments regarding U.S. Patents Nos. 9,937,097 (“the ’097 Patent”), 9,763,851 (“the ’851 Patent”), and 9,849,061 (“the ’061 Patent”) in its entirety

for its statute-violating reliance on grounds, prior art references, and combinations of prior art references that EIS actually raised or reasonably could have raised in EIS's three failed IPRs challenging those same Novoluto '097, '851, and '061 patents. The grounds for this motion are set forth in Novoluto's Letter Brief and are further supported by the Declaration of Dr. Kimberly Cameron, Ph.D. and corresponding exhibits, all filed concurrently with this motion.

Novoluto previously moved to strike EIS's Initial Invalidity Contentions (D.I. 133, 134), which the Court denied without prejudice to renewing later in the case (D.I. 192).

Pursuant to D. Del. LR 7.1.1, counsel for Novoluto has conferred with EIS's counsel who indicated that EIS will oppose this Motion.

Date: March 9, 2023

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